usefulness and value. Whether it was in condition to be given to the world by another hand, the present writer is ignorant.

As a writer, Professor DEAN was characterized by industry, accuracy, and great carefulness in the examination of authorities, and by clearness and unambitious simplicity of language in expressing his conclusions. He was not a great author, nor a great lawyer, but he held a fair rank in that honorable class of the profession who are learned, prudent, and trusty counsellors in the affairs of men.

The proprieties of the occasion will be sufficiently served in the present notice, by adding, that Professor DEAN was marked by ingenuousness and sincerity, by freedom from all obtrusive self-assertion, by extraordinary kindness of heart, and simplicity of manners. He was genial and confiding in his social relations, earnest and faithful in the discharge of all the duties of his various positions. His personal character was unblemished by any vices. He was constantly putting forth influences for good upon all classes of the community, and especially upon young men, who, at the threshold of active life, were in need of direction, encouragement, support, and instruction. By the great number of this class with whom he was in one way or another connected, and by a very large circle of personal friends, his death is felt as a great loss.

J. T. M.

RECENT AMERICAN DECISIONS.

Supreme Court of Appeals of Virginia.

WILLIAM P. JETT *v.* THE COMMONWEALTH OF VIRGINIA.

Passing a counterfeit note of a national bank is an offence for which an indictment will lie in a state court, under the laws of the state.

There is nothing in the relations of the state and Federal courts or in the nature of the jurisdiction itself, which makes the jurisdiction of the United States courts to punish the act of passing counterfeit national bank notes, necessarily exclusive.

Nor is it made so by Act of Congress.

The concurrent jurisdiction of the national and state courts considered and discussed. Per JOYNES, J.

THIS was a writ of error to the Circuit Court of *Pittsylvania county.*

The plaintiff in error was prosecuted in the court below and

convicted under the statute of Virginia (Code of 1860, chap. 193, sec. 3), of the offence of uttering and attempting to employ as true a forged bank-note purporting to be a note of The Fourth National Bank of Philadelphia.

A motion was made to arrest the judgment on the ground that the courts of the state have no jurisdiction to entertain a prosecution for that offence.

The motion was overruled and judgment entered on the verdict, whereupon the defendant took this writ of error.

C. E. Dabney and *E. Barksdale, Jr.*, for plaintiff in error.—The prisoner was indicted under the law of Virginia making it forgery to make or utter any counterfeit "note or bill of a banking company." The offence charged was uttering a counterfeit note of The Fourth National Bank of Philadelphia, a bank formed under the authority of the Act of Congress of June 3d 1864. This act provides for the punishment of the offence of uttering forged notes of such banks.

The Act of Congress of September 24th 1789, known as the Judiciary Act, provides that the Circuit Courts of the United States "shall have exclusive cognisance of all crimes and offences cognisable under the authority of the United States," unless the laws of the United States otherwise direct.

When Congress declares any act to be an offence against the United States, and provides for its punishment as such, it is not competent for the courts of a state to entertain a prosecution founded upon the same act, under a law of the state making it an offence against the state, unless the express consent of Congress has been given for that purpose. Congress has not given such consent in respect to the offence of uttering forged notes of the national banks.

The opinion of the court was delivered by

JOYNES, J.—The act described in the indictment is simply a cheat, practised or attempted by one citizen of Virginia upon another, by means of a forged paper purporting to be a bank-note. Whether the forged paper by which such a cheat is effected or attempted, purports to be the note of a state bank or the note of a national bank, the offence pertains equally to those matters of internal police, which, by the acknowledged theory of our insti-

tutions, belong generally to the jurisdiction of the states. This jurisdiction of the states constitutes a cardinal feature of our system of government. Whether in respect to the particular offence described in the indictment, it is superseded and displaced by the paramount jurisdiction of the United States, is the question now before us. It is a grave and important question. It involves the relative rights and powers of the state and Federal governments, and the rights and liabilities of the citizen in respect to both. And is also a question of practical importance. The authorities of the state are dispersed throughout all parts of the Commonwealth, and it is reasonable to suppose that the detection and punishment of this class of offences will be more effectually secured by them than they can be if confided only to the authorities of the United States, who are few in number and confined to a few localities. If, however, the jurisdiction over this class of offences belongs exclusively to the United States, we ought not to usurp it, and have no disposition to do so. If, on the other hand, it belongs to the state, we have no right to surrender it. In the language of the Supreme Court, "the duties of this court to exercise jurisdiction where it is conferred, and not to usurp it where it is not conferred, are of equal obligation. The Constitution, therefore, and the law are to be expounded without leaning the one way or the other:" *Bank of U. S.* v. *Deveaux*, 5 Cranch Rep. 87.

It is not necessary in this case to consider at large the construction of section 2, article 3 of the Constitution of the United States in relation to the judicial power, or the cases in which the jurisdiction of the courts of the United States is exclusive, or those in which a concurrent jurisdiction may be exercised by the courts of the several states. The rules by which these two classes of cases are to be discriminated, do not appear to be precisely determined by the decisions of the Supreme Court, as may be seen from the case of *The Moses Taylor*, decided at the last term of that court and reported in 4 Wallace's Rep. 411. That case, however, affirms it to be a general rule, that while the judicial power of the United States is, in some cases, unavoidably exclusive of all state authority, it may be made so in all others at the election of Congress.

It cannot be questioned that the class of offences to which that now before us belongs, was within the jurisdiction exercised by

the states before the adoption of the Federal Constitution. The jurisdiction over this class of offences still belongs to the states, unless they surrendered or lost it in the formation of that Constitution. To show that they did so, it is not enough, according to the acknowledged rule of construction, to show that jurisdiction over the same class of offences was granted to the United States by the Constitution. To deprive the states of an authority or jurisdiction which they had before the adoption of the Constitution, there must be either an express grant of exclusive authority or jurisdiction over the same subject or class of cases to the United States; or there must be a grant of authority or jurisdiction to the United States not in terms exclusive and an express prohibition against the exercise of like authority or jurisdiction by the states; or there must be authority or jurisdiction granted to the United States, to which a similar authority or jurisdiction in the states would be absolutely and totally contradictory and repugnant: Federalist, No. 32; Id., No. 82; *Houston* v. *Moore*, 5 Wheat. Rep. 1; 1 Kent Com. 400; Story on Constitution, §§ 436-447.

In the present case there is no express grant of exclusive jurisdiction to the United States, nor any express prohibition to the states. If, therefore, the states have lost their ancient jurisdiction over any offence of this class, it must be because jurisdiction over the offence has been given to the United States to which a like jurisdiction in the states would be wholly contradictory and repugnant.

Congress having, as must be assumed, authority to establish the system of national banks, had authority to protect their circulation from being discredited by counterfeits, in order to secure the usefulness of the system. When, therefore, the forged note employed in effecting a cheat, purports to be the note of a national bank, Congress has a right to declare the act of uttering or attempting to pass such note to be an offence against the United States, and has accordingly done so. Literally speaking, the Act of Congress and the statute of the state punish the same identical act, namely, the act of uttering or attempting to pass as true the forged note. But the two statutes aim at the accomplishment of different objects; the authority under which they were enacted is derived from different sources, and though the offence which each

of them punishes is comprised in one and the same act, there is really an essential difference in the character of the two offences.

There is nothing peculiar in respect to the law of the state or to the offence now in question, to render the jurisdiction of the state courts, under the law of the state, incompatible with that of the Federal courts under the Act of Congress, if it would not be so, upon general principles, in all cases whatsoever. The law of the state is in entire harmony with the Act of Congress, and seeks, though for different reasons and in pursuance of a different policy, to effect the same object, to wit, the suppression of counterfeits.

A conflict of jurisdiction between the Federal and state courts may occur under different circumstances. Thus, an Act of Congress and the statute of a state may declare the same identical act to be an offence; as for example, the act of counterfeiting the coin, or the act of uttering and passing counterfeit coin. In other cases the Act of Congress and the law of the state are aimed at different offences, but in doing an act prohibited by the Act of Congress, the offender also does an act prohibited by the law of the state. For instance, a party may commit the offence of robbing the mail, and commit, at the same time, the offence of assault and battery. In the discussions to which this subject has given rise, these and probably other distinctions have been claimed to make a difference in the principle governing the cases. At an early period after the adoption of the Constitution, an eminent jurist expressed the opinion that a man could not, by doing any one act, violate, at the same time, the laws of the United States and the laws of any one of the states, and that where a party, in the course of doing an act which violates a law of the United States, also does an act which violates the law of a state, he really commits but one offence, and that the offence against the United States, on the ground that the greater crime includes and swallows up the less: Letter of Judge CHASE to the Governor of Maryland, October 6th 1794, Journal of Jurisp. 262. An able writer, at a much more recent period (1845), advocated a similar view in respect to certain offences, on the ground that an offence against one state ought to be considered as merged in an offence against all the states: 4 Am. Law Magazine 318, 334–340. Others, while admitting that the same act may be declared an offence both by Act of Congress and by state law, and punished

under either one, have contended that a judgment of conviction or acquittal under either one may be pleaded in bar of a prosecution under the other, and that according to the rules of comity which prevail between concurrent jurisdictions, the one which first attaches should be allowed to proceed to judgment: Per WASHINGTON, J., *Houston* v. *Moore*, 5 Wheat. 1; Rawle on Const. 205-206.

Others again have contended, as a general proposition, that when any act has been declared by Congress to be an offence against the United States, it is incompatible and repugnant for a state legislature to declare the same act to be an offence against the state. This has been maintained chiefly on the ground that the offender would be thereby exposed to be twice punished, or twice put in jeopardy for the same offence. This view was maintained by the Supreme Court of Missouri, in the case of *Mattison* v. *The State*, 3 Mo. R. 421, and by Mr. Justice MCLEAN, in the two cases hereafter cited from 5 Howard and 14 Howard.

The conflict and variety of opinions on this subject may be further seen by reference to the following cases: *State* v. *Antonio*, 3 Brevard's R. 562; *State* v. *Tutt*, 2 Bailey's R. 44; *Commonwealth* v. *Fuller*, 8 Metc. R. 313; *State* v. *Wills*, 2 Hill's S. C. R. 657; *State* v. *Harlan*, 1 Dougl. Mich. R. 207; *Rouse* v. *State*, 4 Ga. R. 136; *Hendrick's Case*, 5 Leigh's R. 709.

I have made this brief allusion to some of the conflicting views which have been entertained on this subject, in order to show the confusion and perplexity in which it has, until recently, been involved, and the importance and value of the decisions of the Supreme Court, to which I shall now refer.

The first of the cases alluded to is that of *Fox* v. *State of Ohio*, 5 Howard Rep. 410, decided in 1847.

The precise question in that case was, whether the state of Ohio had authority to provide by law for punishing the offence of passing counterfeit coin. The case was very fully and ably argued. Mr. Justice MCLEAN was of opinion that such a power could not be exercised by Ohio, because it would be incompatible with the exercise of the same power by the United States, which he thought clearly existed. But all the other judges concurred in holding that the state possessed the power.

There are some expressions in the opinion in that case which throw doubts upon the power of Congress to provide for punishing

the offence of passing counterfeit coin. But the case was not put on that ground, and subsequent parts of the opinion affirm the right of the state to provide for punishing the act of passing counterfeit coin as an offence against the state, even though Congress should provide, and have the right to do so, for punishing it as an offence against the United States. The court further held, that if the party should be punished twice for the same act, he could not complain that the 5th article of the Amendments to the Constitution had been violated, which provides that no person shall be subject for the same offence to be twice put in jeopardy of life or limb, but that, in point of fact, the benignant spirit in which both the state and Federal systems are administered would preclude all danger of such double convictions, unless it might be in cases of special enormity or demanding unusual rigor.

In *United States* v. *Marigold*, 9 Howard Rep. 560, it was held, that Congress had the power to protect the coin by providing for the punishment of persons who bring counterfeit coin into the United States with intent to pass it, and also for the punishment of persons who utter and pass any such counterfeit coin. The court expressly re-affirm what it was said was laid down in *Fox* v. *State of Ohio*, "with a view of avoiding conflict between the state and Federal jurisdictions," namely, "that the same act may, as to its character and tendencies, and the consequences it involves, constitute an offence against both the state and Federal governments, and may draw to its commission the penalties demanded by either, as appropriate to its character in reference to each."

The same principle was again affirmed in *Moore* v. *People of Illinois*, 14 Howard Rep. 13. That was an indictment in a court of the state of Illinois, under a statute of that state, for harboring a fugitive slave. It was contended that the statute of the state was void because it provided for the punishment of the same act for which, by the Act of Congress of 1793, the offender was subjected to a penalty of $500, to be recovered by the owner of the slave, and that so the party would be subject to a double punishment for the same offence. The court held, that the two statutes did not provide for the punishment of the same identical acts; but that even if they had done so, the consequences insisted on would not have followed. The language of the court on this point is very clear and emphatic. "But admitting," said

the court, "that the plaintiff in error may be liable to an action, under the Acts of Congress, for the same act of harboring and preventing the owner from retaking his slave, it does not follow that he would be twice punished for the same offence. An offence, in its legal signification, means the transgression of a law. A man may be compelled to make reparation in damages to the injured party, and be liable also to punishment for a breach of the public peace, in consequence of the same act, and may be said, in common parlance, to be twice punished for the same offence. Every citizen of the United States is also a citizen of a state or territory. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for the infraction of the laws of either. The same act may be an offence [under], or transgression of, the laws of both. Thus, an assault upon the marshal of the United States, and hindering him in the execution of legal process, is a high offence against the United States, for which the perpetrator is liable to punishment, and the same act may be also a gross breach of the peace of the state, a riot, assault, or murder, and subject the same person to punishment under the state laws for misdemeanor or felony. That either or both may, if they see fit, punish such an offender, cannot be doubted. Yet it cannot be truly averred, that the offender has been twice punished for the same offence, but only that, by one act, he has committed two offences, for each of which he is justly punishable. He could not plead the punishment by one in bar to a conviction by the other. Consequently this court has decided, in *Fox* v. *The State of Ohio*, that a state may punish the offence of uttering or passing false coin, as a cheat or fraud practised on its citizens, and in the case of *The United States* v. *Marigold*, that Congress, in the proper exercise of its authority, may punish the same act as an offence against the United States."

This case was decided in 1852, since which time the question does not appear to have been raised in the Supreme Court.

In the case of *The United States v. Amy*, a slave prosecuted for the offence of robbing the mail, and tried in the Circuit Court of the United States for the Eastern District of Virginia, before Chief Justice TANEY and Judge HALYBURTON, at May Term 1859, the Chief Justice laid down the same principle in very strong terms as the clear and settled law. He said: "In maintaining

the power of the United States to pass this law [punishing a slave with imprisonment for robbing the mail], it is, however, proper to say, that as these letters, with the money in them, were stolen in Virginia, the party might undoubtedly have been punished in the state tribunals, according to the laws of the state, without any reference to the post-office or the Act of Congress, because, from the nature of our government, the same act may be an offence against the laws of the United States and also of a state, and be punished in both. This was considered and decided in the Supreme Court of the United States in the case of *Fox* v. *State of Ohio*, and in the case of *United States* v. *Marigold*, and the punishment in one sovereignty is no bar to his punishment in the other.

"Yet in all civilized countries it is recognised as a fundamental principle of justice that a man ought not to be punished twice for the same offence. And if this party had been punished for the larceny in the state tribunal, the court would have felt it to be its duty to suspend sentence, and to represent the facts to the President, to give him an opportunity of ordering a *nolle prosequi* or granting a pardon:" Richmond Law Jur. pp. 201, 202.

These principles must be regarded as the settled doctrine of the Supreme Court. They ought to set at rest the disputed questions to which they apply. They appear to me to be reasonable and just. But if I thought otherwise, I should feel no hesitation in yielding to the decisions of the Supreme Court, on a question of this character, as authority binding upon me. They are in conformity with the decision of the General Court of Virginia in *Hendrick's Case*, 5 Leigh Rep. 707. That was a prosecution for passing a forged check, purporting to be a check of the cashier of the Bank of the United States. In delivering the opinion of the court, Judge DANIEL said: "It was urged by the prisoner's counsel that the judgment ought to have been arrested, on the ground that the courts of Virginia ought not to punish criminally any forgery of the notes, bills, or checks of or upon the Bank of the United States, because this is an offence punishable by the courts of the United States, and if a state court, which cannot oust the courts of the United States of their jurisdiction, should proceed, it might so happen that a man might be punished twice for the same offence. The answer to this is, that the law of Virginia punishes the forgery not because it is an

offence against the United States, but because it is an offence against this Commonwealth, committed within its limits, and the punishment of it is designed for the protection of our own citizens."

The Act of Congress by which the forging of checks, &c., of the Bank of the United States was made punishable as an offence against the United States, contained a provision to the effect, that nothing therein should prevent the courts of the several states from taking cognisance of the same act as offences under state laws. But that proviso did not, as is conceded on all hands, *confer* jurisdiction upon the state courts, and is immaterial, therefore, to the purpose for which I now cite this case. The only effect claimed for such a proviso, as we shall see hereafter, is, that it relinquishes as to the particular class of offences, the exclusive jurisdiction of the courts of the United States, under the provisions of the Judiciary Act, and allows the courts of the states to exercise a jurisdiction which they might have exercised, if not prohibited by the grant of exclusive jurisdiction to the courts of the United States by the Judiciary Act.

This case, therefore, and every other which holds that a prosecution may be maintained in a state court under a state law, for the offence of counterfeiting the coin, or for passing counterfeit coin, or for any other offence against the coin provided for by Act of Congress, or for the offence of forging a note or check of the Bank of the United States, or of passing such forged note or check, is an authority for the proposition which I have been maintaining, that there is no incompatibility or repugnance between the jurisdiction of the courts of the United States to punish a man for a particular act as an offence against the United States, under an Act of Congress, and the jurisdiction of the courts of a state to punish the same man for the same act as an offence against the state, under the laws of the state. The cases of this sort are numerous, and many of them are cited in a former part of this opinion.

I do not see how the allowance of such a concurrent jurisdiction to the state courts, can lead to any collision between them and the Federal courts, unless it should arise from a disregard of the rule of comity which prevails between concurrent jurisdictions, that the one which first takes cognisance of a subject-matter shall be allowed to proceed without interference by the other: *Taylor* v. *Carryl*, 20 Howard Rep. 583; *Freeman* v. *Howe et al.*, 24

Howard Rep. 450. Such a concurrent jurisdiction has long been exercised in respect to certain classes of criminal acts, and I am not aware that it has led to any such collision. We must suppose that the Federal and state authorities will be exercised in good faith without jealousy, and with a view to the general good. So exercised there need be no sort of conflict between them. But if there should be more ground than I think really exists, to apprehend such a collision, it would only present an instance of those "occasional interferences" spoken of in the Federalist, which afford no ground, in the absence of absolute incompatibility and repugnance, for ousting the states of an authority which they exercised before the formation of the Constitution: Federalist, No. 32.

I do not think there is any solid ground for the objection that this doctrine would, in its practical working, lead to injustice and oppression, by subjecting offenders to double punishment for the same act. We must suppose that the criminal laws will be administered as they should be in a spirit of justice and benignity to the citizen, and that those who are intrusted with their execution will interpose to protect offenders against double punishment, whenever their interposition is necessary to prevent injustice or oppression, and that if they should fail to do so, the wrong will be redressed by the pardoning power. We may safely assume that there will be no cases of double punishment hereafter, as I presume there have been none heretofore, except perhaps in cases of great enormity, or in cases attended by some peculiar circumstances, in which the ends of justice could not be otherwise secured.

It is said that the security thus afforded to the liberty of the citizen is altogether too precarious. But it is not more so than in any other case where no absolute rule has been prescribed, which is to govern in all cases. Whenever a power is bestowed which may be exercised or not exercised, according to the discretion of the court, or where the manner or extent of its exercise depends on the discretion of the court, injustice may be done by an abuse of the discretion, and it may not be possible to prevent or to correct it. The law in every such case confides, of necessity, in the integrity and justice of the courts.

It must be remembered, however, that these objections to the practical consequences of allowing such a concurrent jurisdiction

to the state courts, if well founded, do not afford a conclusive argument against the existence of the jurisdiction. They could, at most, only turn the scale if the argument on other grounds left the question in doubt.

I conclude, therefore, that there is nothing in the relation between the state and Federal governments, or in the nature of the jurisdiction itself, which makes the jurisdiction of the courts of the United States to punish the act of passing a forged note of a national bank, as an offence against the United States, necessarily exclusive of the jurisdiction of the state courts to punish the same act as an offence against the state. It remains to consider whether it has been made so by Act of Congress.

As I have said before, the offence in this case belongs to a class over which the states and their courts exercised jurisdiction before the adoption of the Federal Constitution. How far it is competent for Congress to prohibit the state courts from exercising jurisdiction, under state laws, over any such class of criminal acts, by giving exclusive cognisance of them to the courts of the United States, has not been determined by the Supreme Court, and it is not necessary for me to express an opinion on the question. This question was not in the mind of the court when it was said, in *Martin* v. *Hunter*, *Lessee*, 1 Wh. Rep. 304 (337), and in *The Moses Taylor*, 4 Wallace Rep. 411, "that the judicial power of the United States is unavoidably, in some cases, exclusive of all state authority, and in all others may be made so at the election of Congress." This is evident from the context of this passage in the former case. The court had just adverted, with approbation, to an argument which had been urged, that it is imperative on "Congress to vest all the judicial power of the United States in the shape of original jurisdiction in the supreme and inferior courts created under its own authority." And immediately after the passage above quoted, and showing its meaning, are the following passages: "No part of the criminal jurisdiction of the United States can, consistently with the Constitution, be delegated to state tribunals. The admiralty and maritime jurisdiction is of the same exclusive cognisance; and it can only be in those cases where, previous to the Constitution, state tribunals possessed jurisdiction independent of national authority, that they can now constitutionally exercise a concurrent jurisdiction. Congress, throughout the Judiciary Act, and particularly in the 9th, 11th, and 13th

sections, has legislated upon the supposition that in all cases to which the judicial power of the United States extended, they might rightfully vest exclusive jurisdiction in their own courts."

The opinion of Mr. Justice WASHINGTON in *Houston* v. *Moore*, 5 Wheat. Rep. 1, is relied upon by the counsel for the plaintiff in error, to sustain the proposition that Congress may thus exclude the jurisdiction of the state courts under state laws, and that it did so by the provision of the Judiciary Act giving to the courts of the United States exclusive cognisance of all crimes and offences cognisable under authority of the United States, unless otherwise provided by that act or by some other Act of Congress, so that the express consent of Congress was necessary to enable the state courts to exercise jurisdiction under state laws over acts declared by Congress to be offences against the United States. It does not appear to what extent the views in question received the concurrence of the other judges, one of whom declared in his opinion that the views of the judges composing the majority, coincided in but one thing, namely, that there was no error in the judgment appealed from, and that no point whatever was decided, except that the fine was constitutionally imposed upon the plaintiff in error. Per JOHNSON, J., p. 47.

The single opinion of this eminent judge, however, is entitled to great weight, and deserves further consideration. It must be observed that Mr. Justice WASHINGTON regarded the case then before him as involving the jurisdiction of the state courts to "enforce the laws of Congress," as he said in one place, or, as he said in another place, to "adjudicate in a case which depends on a law of Congress and to enforce it." The case before us, on the other hand, involves the question whether the state courts can take jurisdiction of an offence against the state created by a statute of the state.

Houston, in that case, had been tried by a court-martial of the state of Pennsylvania, under an act of that state passed in 1814, providing that officers and privates of the militia neglecting or refusing to serve when called into actual service in pursuance of an order or requisition of the President of the United States, shall be liable to the penalties defined in the Act of Congress passed February 28th 1795, or to any penalty which may have been prescribed since the date of that act, or to any which might be thereafter prescribed by any law of the United States, and

providing for the trial of such delinquents by a state court-martial, &c. The learned judge, after stating the character of the case in the general terms above quoted, says, that "the offence to be punished grows out of the Constitution and laws of the United States, and is, therefore, clearly a case which might have been withdrawn from the concurrent jurisdiction of the state tribunals." Proceeding to consider the question whether, as Congress has not given exclusive jurisdiction to courts-martial deriving their authority from the United States, the courts-martial of the state can exercise jurisdiction, the learned judge refers to the doctrine of the Federalist, that Congress "may commit the decision of causes arising upon a particular regulation to the Federal courts only, yet that in any case in which the state tribunals should not be expressly excluded by the acts of the National Legislature, they would, of course, take cognisance of the causes to which these acts might give birth." The judge says that he perceives no objection to this doctrine, so long as the power of Congress to withdraw the whole or any part of those cases from the jurisdiction of the state courts, is, as he thinks it must be, admitted. This part of the opinion has no reference to prosecutions in the state courts for offences against the state under state laws. It has reference to cases arising under Acts of Congress, and affirms the right of the state courts to take cognisance of them, unless the jurisdiction of the courts of the United States is made exclusive. This is sufficiently obvious from the language of the judge. But it will appear perhaps even more clearly from the 82d number of the Federalist, to which the judge refers.

The learned judge then refers to the practice of the general government as confirming this doctrine. He cites the Judiciary Act as showing the opinion of Congress, that a mere grant of jurisdiction generally to the courts of the United States, was not sufficient to vest the exclusive jurisdiction. He then proceeds as follows: "In particular this law grants exclusive jurisdiction to the Circuit Courts of all crimes and offences cognisable under the authority of the United States, except where the laws of the United States should otherwise provide; and this will account for the proviso in the Act of the 24th of February 1807, ch. 75, concerning the forgery of the notes of the Bank of the United States, that nothing in that act contained should be construed to deprive the courts of the individual states of jurisdiction, under

the laws of the several states, over offences made punishable by that act. A similar proviso is to be found in the Act of the 21st of April 1806, ch. 49, concerning the counterfeiting of the current coin of the United States. It is clear that, in the opinion of Congress, this saving was necessary in order to authorize the exercise of concurrent jurisdiction by the state courts over those offences, and there can be very little doubt but that this opinion was well founded. The Judiciary Act had vested in the Federal courts exclusive jurisdiction of all offences cognisable under the authority of the United States, unless where the laws of the United States should otherwise direct. The states could not, therefore, exercise a concurrent jurisdiction in those cases, without coming into direct conflict with the Act of Congress. But by these savings Congress did provide that the jurisdiction of the Federal courts in the specified cases should not be exclusive, and the concurrent jurisdiction of the state courts was instantly restored, so far as, under state authority, it could be exercised by them." With deference to the authority of this eminent judge, I submit that this reasoning is not satisfactory.

The object of the Judiciary Act was to establish the judiciary system of the United States, and to regulate the jurisdiction of the courts of the United States, as far as this was not done by the Constitution. In respect to crimes, the object was to regulate the jurisdiction of those courts over such crimes as could be prosecuted and punished under the authority of the United States. It was thought by many, and doubtless by the framers of that act, though it has since been settled otherwise, that the courts of the United States might take cognisance of offences at common law, without the authority of an Act of Congress, and hence it was, I apprehend, that they used the general expression, "Cognisable under the authority of the United States." But the courts of the United States could not take cognisance of any offence that was not a violation of some law of the United States, whether common law or statute, and it was of such violations of the laws of the United States that exclusive cognisance was given to the Circuit Courts, unless otherwise provided by law. If so otherwise provided, the jurisdiction of the Circuit Courts, thus declared to be exclusive, might be exercised equally by the courts of the states. It was long a subject of controversy and doubt whether Congress might not thus confer jurisdiction upon the courts of the

states to enforce the laws of the United States: see *Jackson* v. *Rose*, 2 Va. Cases 34; 1 Kent Com. 401–405. But what has this to do with the jurisdiction of the state courts to punish offences against state laws, even though the offences consist in acts declared by Congress to be offences against the United States? The object of this Act of Congress had no reference to offences against the laws of the states, which were the concern of the states and not of the United States, and could not be made cognisable by the courts of the United States. It was no part of the object of that act to regulate the jurisdiction of state courts under state laws, which belonged to the state legislature and not to Congress, and the act makes no reference to state courts, except to say when they may, and when they may not, exercise the same jurisdiction that is vested in the courts of the United States.

It is obvious that the learned judge construed the terms "crimes and offences," in the 11th section of the Judiciary Act, as signifying the acts by the doing of which crimes and offences are committed. In this way he reaches the conclusion that the Act of Congress vests in the courts of the United States exclusive cognisance of those acts, and I apprehend it could be reached in no other way. But this is not the proper sense of these words. A crime or offence is the transgression of a law, and the same act may constitute several offences. We have seen that the same act may be an offence against the United States, and at the same time, an offence against the state. So the same act may constitute several offences against the laws of the state, of which numerous illustrations are collected in 2 Leading Criminal Cases 555. The terms "crimes and offences," therefore, do not properly signify the acts by which the laws are violated, but they signify the violations of law which those acts produce. And I see no reason for supposing that they were not used in this sense in the Judiciary Act. Congress could give, and intended to give, to the courts of the United States cognisance of criminal acts only so far as they constitute violations of the laws of the United States. So far as they violate the laws of the states, it was not in the power of Congress to confer the cognisance of them upon the Federal courts.

The learned judge did not fail to see that an act done by a party may violate an Act of Congress and so be an offence against the United States, and, at the same time, violate a law

of the state and so be an offence against the state. But he did not clearly distinguish between the act and the offence. Hence he says, in a subsequent part of the opinion, that where Congress allows the state courts to punish, under state laws, the same acts that are made offences against the United States, the sentence of conviction or acquittal in either court (state or Federal) may be pleaded in bar of a prosecution before the other. And so he thinks that when Congress has vested in the courts of the United States exclusive cognisance of crimes and offences against the United States, the courts of the states cannot exercise jurisdiction over the same acts, under state laws, as an offence against the state, without coming into conflict with the Act of Congress. But we have seen that there is no incompatibility or conflict between such an exercise of jurisdiction by state courts, under state laws, and by the courts of the United States, under Acts of Congress.

I think these observations are sufficient to show that the views of Mr. Justice WASHINGTON are not well founded, and that the Act of 1789 does not exclude the state courts from taking jurisdiction of an offence against the state, under a state law, committed by the same act which constitutes an offence against the United States under an Act of Congress. It follows that such a saving proviso as we have been considering is not necessary to enable the courts of the states to exercise their jurisdiction in the cases alluded to.

This conclusion is fully sustained by the cases of *Fox* v. *State of Ohio*, *Moore* v. *People of Illinois*, *United States* v. *Amy*, and *Hendrick's Case*, before cited. In the first and last of these cases the Acts of Congress contained provisos to save the jurisdiction of state courts under state laws. But the existence of the provisos was not noticed, and the cases were decided on the ground of a separate and independent authority in the states to punish offences against their own laws. In the other two cases the Acts of Congress contained no such savings, and yet the state courts were held to have jurisdiction under state laws. See also *State* v. *Tutt*, 2 Bailey's S. C. Rep. 44.

I see no reason to believe that Congress really intended by the Act of 1864 to exclude the jurisdiction of state courts, under state laws, to punish the circulation of forged notes of national banks. The act exhibits no jealousy or distrust of the state courts

On the contrary, that act amended the Act of 1863, so as to give to the state courts concurrent jurisdiction with the Federal courts, of the important suits and proceedings which may, under that act, be instituted against national banks, the jurisdiction of which was, by the Act of 1863, confined to the Federal courts. And I presume that no good reason can be suggested why a state court should be allowed to punish, under a law of the state, a cheat effected by means of a counterfeit coin, and not be allowed to punish, under a law of the state, a cheat effected by means of a forged national bank note.

Upon the whole, I think that the objection of a want of jurisdiction in the court was properly overruled. I think also that there is no foundation for the other errors assigned in the petition, and that the judgment should be affirmed.

MONCURE, President, concurred.

RIVES, J., dissented.

Judgment affirmed.

Supreme Court of Pennsylvania.

THE PITTSBURGH & CONNELLSVILLE RAILROAD COMPANY *v.* WILLIAM A. M'CLURG.

It is negligence for a passenger on a railroad train to put his arm out of the car window, and if the facts are undisputed that the injury resulted from this cause, the Court should pronounce it negligence as a matter of law.

There may be qualifying circumstances in the condition of the passenger which would make special care the duty of the carrier, but such facts should be proved as part of the case. Per THOMPSON, C. J.

The case of the *New Jersey Railroad Co.* v. *Kennard*, 9 Harris 203, so far as it decided that it is the duty of railroad companies to place guards on their car windows so as to prevent passengers from putting their limbs out, overruled.

ERROR to District Court of *Allegheny county.*

Shiras, for plaintiff in error.

Lowrie & Marshall, for defendant.

The opinion of the court was delivered at Philadelphia, January 7th 1868, by